

754 attacks also upon the persons or possessions of enemies. This type of sorcery in a very common form involves the enslavement of the spirit of another person, often a child of one's own family or kin.¹ The person whose spirit is used may be killed either by violent or by magical means. Sorcery of this type is much feared, but if wealth supposedly gained by this means is used for the benefit of the kin, the sorcerer may be tolerated or even protected in the exercise of his black art. Beneficiaries do not often have qualms concerning the source of the benefits received. One who, by reason of his family connexions or his own power, has secured a strong position may escape interference. Jealousy or grudges, however, often bring out accusations from within the circle of kin.

754 Accusations may also be made by outsiders. With the decline in
 612 influence which the tribal courts have suffered, and their inability to inflict capital punishment, sorcery is less frequently punished than formerly. The consequent reductions in the number of innocent victims is a gain. This same cause has operated, how-

[177] ever, to increase dealings in, and fear of, sorcery. Most of the cases brought to European courts, and even to the Church, under the name of 'poisoning' are in reality accusations of sorcery.

178 In the foregoing brief note it has not been possible adequately
 754 to treat the subject, but it will be seen that sorcery has long been a divisive influence in Umbundu life. It sometimes seriously affects the cohesion of the household and the larger kinship groups. Economic, political, and other forces now seem to be acting to increase the incidence of sorcery, the influence of which is probably a considerable factor in the present rapid disintegration of the Umbundu social structure.

The Hierarchy of Age

561 Passing references have been made to associations of coevals. The Ovimbundu recognize very definitely the hierarchy of age and consider orderly society quite impossible without it. One of the keenest criticisms of the European and his ways is contained in the aphorism:

Kundeke ka ku li ukulu.

In 'civilization' there is no senior.

[538]

To Umbundu wisdom this is an impossible state of affairs;

¹ The Umbundu term is *oku andeka*; vide ref. *infra*, p. 107, n. 1.

770 regent and incarnation" of the spirits. Sacrifices were made at the royal
 643 shrine or *kokokoto* ("at the skulls"), where the skulls of past chiefs were
 768 kept, in order to:-
 782

[372] (i) control the elements i.e. to ensure a sufficient supply of rain and avoid the dangers caused by storms; also to control fire by providing a new fire ceremonially kindled⁽¹⁾ from which everyone took his fire.

[342] (ii) to ensure fertility, towards which the royal marriage had great
 [241] influence. The queen's special province was agriculture and her kitchen was sanctified by human sacrifice to guarantee the national food supply. Ceremonially treated seed was distributed to be mixed with the seed of each granary.

643 (b) To represent the country in its external relations, principally to make
 648 trade agreements with other chiefs, or to make war on other peoples in order
 721 to get tribute and plunder. The war leader (*Kesongo*) has his own residence
 [70] entirely separate from that of the king, whom he must not meet face to face except on certain ceremonial occasions.⁽²⁾ Each king must inaugurate his reign with a war, during which or after which he must ceremonially "eat the old one" (*oku lia ekongo*) - who was usually a specially fattened slave cooked with the flesh of the principal animals commonly eaten.⁽³⁾

[245] (c) To dispense justice. The chief's court or *olusenje* was the supreme court of the chiefdom. The chief had the final word in any case, but most chiefs acted according to custom.

644 (d) To protect himself and the chiefdom, the chief could use "magic" (?) which might have been accounted witchcraft or murder if practised without authority: e.g. the ritual murder of a pregnant woman, or of the children
 • [882] whose lives were required for building and furnishing the queen's kitchen.

643 (e) The chief made much use of divination in order to carry out his
 791 office. For this purpose he had his own diviner (*citue cosoma*), who was of the blood royal; but he also consulted diviners of other regions and types.

643 Succession to chiefship is in the male line,⁽⁴⁾ from father to son, elder brother to younger brother or brother's son, or sometimes to one more distantly related. The election is made by the councillors whose duty it is (?), ordinarily before the old chief's death is announced. These same councillors may depose an unpopular chief, and there have been many such depositions. This "democratic" tendency of the Ovimbundu has been noted by most writers. Childs points out that it is attested by the fact that a chief (formerly as well as today) works in his own fields, and by folk-tales which give incidental and intimate pictures of petty details in the lives of the chiefs.

(1) See above, p. 26.

(2) In Bailundu he, with certain other officials, was of the stock of slaves of the state (*ovindili visosa*).

(3) Childs, p. 21. Many early writers refer to the cannibalism of the "Jaggas" or "Imbangalas" who are thought to have been the Ovimbundu chiefs. (See above, p. 8, and also Lacarda and Ravenstein, quoted by Childs, pp. 17ff.)

(4) But inheritance is said to follow a different line among chiefs from among commoners; possibly inheritance is also in the paternal line. See Childs p. 18.

+ See footnote 1, p. 31

692
567 Hamby and Childs seem to suggest that any case might be referred to the chief for his decision: "Even a slave used to have rights of appeal to the king if he were starved or beaten without cause".⁽¹⁾ Neither describes the composition of the courts or the mechanism of appeal.

Legal procedure

695 Childs writes rather obscurely "Cases might be settled by ordeal or by decision of the king, and there was therefore room for appeal and retrial".⁽²⁾

One kind of ordeal, the ombulungu or poison ordeal, is described by Hamby.⁽³⁾ It was used (only?) when the accused was thought to have committed murder by poison or sorcery. (If weapons were used, the accuser, usually a relative of the deceased, had the right to kill the murderer with the same kind of weapon.) If a woman were accused in this way, her son or brother would take her place in the poison ordeal.

The complainant in a suit is called ombile, the defendant ovilue, and the witness uvangi. Cushman states that no evidence is ever ruled out of court, and that each witness is required to give a complete account of all his dealings with the persons concerned in the case, so that the court may know on which side he is likely to be prejudiced.⁽⁴⁾ Hamby⁽⁵⁾ adds that formerly a witness had to make recompense to the man about whom he had told a lie, and probably received a beating as well. According to Cushman an Umbundu court may find that both parties are to blame in a case, and may fine or penalise both according to the degree of guilt. "If the chief is not satisfied, he simply gets up and leaves the court circle. This indicates that the evidence has not been satisfactory and more must be presented."⁽⁶⁾

672 In the absence of the delinquent, responsibility for crime was formerly transferred to a relative. If a thief escaped, responsibility would rest with a brother, a father, or a son. The mother's brother was often held responsible for the misdeeds of his sister's children, and would be expected to pay their debts.⁽⁷⁾

Punishments

685 A thief was punished by a beating and a fine paid to the persons from whom he had stolen.⁽⁸⁾ An habitual thief was sold into slavery. He might be redeemed, but only if the authorities considered his reformation complete.⁽⁹⁾ Murder was punishable by death, although this penalty might be avoided by a heavy fine paid to the relatives, usually the mother, mother's brother, or sister's son of the deceased. If the victim were of the royal family, the murderer might be put to death after the payment of the fine. The punishment for women murderers was the same as for men.⁽¹⁰⁾ In adultery the woman was not punished, but a man was punished in the same way as a murderer, i.e. by death or a heavy fine. (Hamby gives the fine

(1) Hamby, *op.cit.*, p.201.

(2) *op.cit.*, p.203.

(3) *op.cit.*, p.201.

(4) Hamby, *op.cit.*, p.201.

(5) Cushman, 1944, p.39.

(6) 1949, p.21.

(7) 1944, pp.38-9.

(8) 1944, p.39.

(9) *Ibid.*, p.202.

(10) Hamby, *op.cit.*, pp.202-3.

for murder as two oxen and two slaves; for adultery, two oxen, a pig, and a slave.) Today a man who has committed adultery sometimes takes the woman and all children under three years of age, but this is for the husband to decide. An adulterer with one of the chief's wives was castrated but not killed, and the castration might be compounded for a high fine, while he, his sisters, and the sons of his sisters would become slaves of the chief. (1) Hambly states finally that "Criminal law did not distinguish between responsibility for intentional and unintentional offences." (2)

There is no information regarding the kinds of cases tried or the punishments given in the courts of village headmen or sub-chiefs today.

INHERITANCE

It has been noted above that moveable property is inherited in the maternal line, land in the paternal line. (3) The eldest brother of the deceased's mother has the first claim and is responsible for settling disputes. He may distribute the property to the mother of the deceased, the maternal grandfather, or to a brother of the deceased, but is not compelled to do this. Women never inherit cattle or land, although the sisters of a deceased woman usually receive most of her household utensils (the rest belong to her husband). A widow goes to the house of (? marries) the eldest brother of the deceased or her own maternal uncle, or she may return to her father's village. Apparently her children accompany her, although one would expect them to go to her brother. (4)

DIVORCE

Divorce appears to be infrequent; grounds for divorce are many, but difficulties are often overcome by a compromise between the two kin groups concerned. Causes for dissatisfaction on the part of a husband include his wife's incompetence, dishonesty, physical weakness, or infidelity (in the last case today a fine from the adulterer is usually accepted and the marriage continues). Barrenness is not a ground for divorce; usually the husband takes a second wife, but the first maintains her position as head wife. Sterility in the male is sometimes suspected, in which case the husband may try another girl, with his wife's consent, or the woman another man. A woman may divorce a man if he is impotent (not sterile), or if he ill-treats her, but not because he is unfaithful. If for any of these reasons the woman returns to her family, the latter are expected to return the marriage payment, although they may wait until another suitor appears who will pay the deserted husband. Whether the initiative in divorce is taken by the woman or the man, the marriage is not annulled until a renunciatory ceremony has been carried out by the husband, the wife, and the wife's father, in the presence of the village headman. The husband receives from his wife's father a roll of tobacco and a pig, and then places leaves (5) and palm oil on his wife's back; he then slaps his wife's back saying "It is finished".

(1) Hambly, op.cit., p.203.

(2) Loc.cit.

(3) See above, p.18, and Childs, 1949, p.44.

(4) Hambly, (2) 1934, p.199.

(5) The leaf used is of the *aps* tree; the same leaf is tied to the pole of the stens of a new village, as a sign of divorce from the old site. (Childs, 1949, p.38; this is the only context in which Childs mentions divorce.)

672 bility of women is mentioned in describing the penalties for adultery and theft.

562 The penalties for offences against the king were undoubtedly
681 more severe than those imposed for the same offences against a commoner. Ngonga says that the punishments for crimes against a chief or medicine-man were, and are now, the same as the penalties for offences against any other person. It seems, however, that if the chief were a very powerful man, he could claim penalties which would have been appropriate for offences against a king.

685 A thief was punished by beating, in addition to which he would have to pay a fine to the people from whom he had stolen, but he rarely escaped without the beating. The thief would be beaten just as much for stealing one animal as he would for stealing many. If a woman stole from her neighbor's garden, those who caught her would tie her and take her to her husband, who would pay compensation and then beat her. A child caught stealing would be taken to the maternal uncle or to his own father. If a woman stole from relations she would probably have no punishment other than a beating. Her husband would have to compensate the relations. Stealing honey from hives is an offence that is punished according to the general laws relating to theft.

696 If a man was sentenced to a death penalty, or to a beating, there was an official appointed by the king or by the chief to see the sentence carried out. This representative was called *ukuenje welombe* which means "the servant, or minister, of the court."

682 Ngonga described the penalty for murder saying, "It was a terrible thing they did to the murderer. A tight triangle of wood was fastened on to his neck by a peg and to this a cord was attached so that he was suspended to the roof with his feet barely touching the ground. In some instances his head was placed through a hole in the door of his house while his body was inside the hut. He had very little food or water and people threw things at him. He was kept tied up for a month to see whether he could pay something. Suppose he could not pay, and nobody would pay for him, he was taken outside the village where his head was cut off. If he had many possessions, he said on the first day, 'If you will take this thing off my neck I will pay two oxen and two slaves.' The payment would be made, not to the wife or children of the murdered man, but to the brother of the mother of the murdered man, or to the mother of the murdered man, or to the son of a sister of the victim. If the murderer agreed to make the payment the people kept him tied up until the

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finer were in their hands. If he murdered one of the royal family 682
he was killed after he had paid the fine." The punishment of a woman [562]
who has committed a murder is the same as that for a man.

Ombelanga is the name given to trial by poison ordeal. The 695
medicine-man holds out both his hands, in each of which there is a
potato, only one of which is poisoned. The accused man says, "If I
have done this thing, this potato will be poison for me. If I have
not done this thing, this potato will be food for me." The complainant
says, "If this is not the man who poisoned my brother, this potato
will be poison for me." They sit in front of the medicine-man, and
each must take the potato in the hand opposite to him. The poison
makes a man very sick. His mouth swells so that he cannot speak.

When a woman was accused of murder her son or her brother [562]
would take her place in the poison ordeal. A boy of fifteen years of
age would have the same treatment as a man. "I don't think a girl
would kill anybody. I never heard about it," said Ngonga. It appears
that resort was made to a medicine-man when the accused was thought
to have committed murder by poison or magic. If the murderer used
weapons, the accuser, who was usually a relative, was entitled to kill
him with the kind of weapon used for the crime.

The penalties for adultery were the same as those for murder. 684
The woman appears to have escaped punishment, except that "her
husband would not have her any more." The male adulterer had
to pay the husband; if he could not pay or escape, the husband had
the right to kill him. In the old days the price for adultery was two
oxen, a pig, and a slave. At the present day a man who has com-
mitted adultery and made payment, possibly takes the woman and
all children under three years of age. The husband has the right to
decide whether the adulterer has the privilege of taking the woman
and her children. An adulterer with one of the king's wives was
castrated but not killed. He might, instead of mutilation, pay a very [567]
high price, while he himself along with his sisters and the sons of
his sisters, would become slaves of the king. If a man could not pay,
he might be sold as a slave in order to provide money for the fine.
Criminal law did not distinguish between responsibility for inten- [671]
tional and unintentional offences.

It is very difficult to say how much of the old law survives. One 681
feels that underneath the ostensible Portuguese rule there is an active 177
native life that is resisting subjugation.

Only two years ago Ngonga paid an ox to prevent one of his female 686
relatives from being pawned. Within the past ten years Ngonga has